

1 PLANTIFF: MR. BAKER

2 WITNESS: Susan Walker

3 COURT:

4 DEFENDANT: MS. MORGAN

5
6 WARM UP

7 THE COURT: Calling the matter of People vs.
8 Foster. Are the parties ready?

9 MR. BAKER: Yes, your Honor. Brad Baker for the
10 people. We are ready to resume the / trial.

11 MS. MORGAN: Thank you, your Honor. Carol Morgan
12 for the defendant Michael Foster. He is present in
13 custody and we are ready.

14 THE COURT: Let's have the jury / brought back in
15 and then we will continue with the witness on the
16 stand.

17 I just want to remind you that you are still under
18 / oath.

19 THE WITNESS: Thank you.

20 THE COURT: You may resume your direct examination,
21 Mr. Baker.

22 MR. BAKER: Thank you, your Honor.

23 THE COURT: Let's proceed.

24 Q. BY MR. BAKER: I want to pick up where we left
25 / off before the break. I was asking you about what
26

1 you observed on that Saturday afternoon. Do you
2 remember what we were talking about?

3 A. Yes, / I do.

4 Q. Okay. When you arrived at the storage
5 facility, were you alone or was there someone with you?

6 A. Yes. When I went there the / first time I was
7 by myself. My father had dropped me off on his way to
8 work.

9 Q. Do you recall what time it was that / you
10 arrived there?

11 A. I would guess about 7:00 a.m. that morning.

12 MS. MORGAN: Objection. Speculation.

13 THE COURT: Sustained.

14 Q. BY MR. BAKER: You can't guess, but if you can
15 estimate it for */ us, that's fine.

16 A. I would estimate about 7:00 a.m. in the
17 morning.

18 Q. Now, you say your father dropped you off.
19 Does that mean that / you walked into the location or
20 did you have to go through the access gate?

21 A. We drove through the gate. We had to input
22 our / personal security code. It is a number code that
23 we enter into the machine and it opens the gate.

24 Q. Your dad drove you into the / business and
25 dropped you off somewhere inside?

1 A. Correct. He dropped me off by my storage
2 shed. I actually call it my garage.

3 Q. Okay.

4 A. Since I / live at home with my parents, or did
5 at the time. I didn't have my own garage so I needed
6 the storage to put my / furniture and belongings.

7 MS. MORGAN: No question pending.

8 THE COURT: Okay. Let's just proceed with the next
9 question.

10 Q. BY MR. BAKER: When you observed the defendant
11 there that morning, do you remember / where you first
12 saw him?

13 A. Yes. It was on the third floor of the
14 building.

15 Q. Is that where your unit is located?

16 A. Yes. I have / two garages there, but I was up
17 there on the third floor that morning.

18 Q. Where is your other unit located?

19 A. It's on the first floor. */

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21 **END OF WARMUP**
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1 EXAM

2 Q. BY MR. BAKER: Did you begin renting both of
3 those storage units at the same time?

4 A. No. I rented the one on the first floor
5 previously. It is / a smaller unit I have personally
6 rented for a really long time.

7 Q. Actually, the one on the third floor is bigger
8 than that one?

9 A. Uh-huh. /

10 THE COURT: Excuse me. You have to answer yes or
11 no so the reporter can take it down.

12 THE WITNESS: I'm sorry.

13 THE COURT: That's all right. It is easy to / do
14 in regular conversation, but we have to attempt to have
15 all your answers be verbal and be out loud.

16 THE WITNESS: All right.

17 THE COURT: Is that a / yes?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Counsel, let's proceed.

20 Q. BY MR. BAKER: Let's go to the afternoon you
21 witnessed the defendant on the third floor. Describe
22 to us what you first / observed?

23 A. I saw him with a moving cart by his unit and
24 he was loading things on the cart.

25 Q. Do you recall the approximate time / that you
26 initially saw the defendant on the third floor?

1 A. I would estimate about 10:30 in the morning.

2 Q. Okay. You said he was loading / a cart by his
3 unit. Had you ever seen the defendant there before?

4 A. Well, I had seen him in the building, but not
5 on the */ third floor.

6 Q. Where had you seen him previously?

7 A. It was just when I would be going in or out of
8 the garages and I would / see him down by the office.

9 Q. All right. How frequently would you see him?

10 MS. MORGAN: Objection. Vague as to time.

11 MR. BAKER: I am just talking about while / she was
12 renting space there.

13 MS. MORGAN: I believe that time period has not
14 really been cleared up yet. Maybe we can have --

15 THE COURT: Counsel, just a minute. / Objection is
16 overruled. Counsel, restate your question.

17 Q. BY MR. BAKER: During the time that you rented
18 space at Storage World, how frequently would you see
19 the defendant there? /

20 A. I can't remember when I first saw him for
21 sure, but I think it was only in the last year or so.

22 Q. You mean within / the previous year before
23 this particular weekend in question?

24 A. Correct. It was probably about six months or
25 so before that when I first saw him. /

1 Q. Now, seeing that we are talking about June the
2 14th, would it be sometime in December when you first
3 met the defendant?

4 MS. MORGAN: Objection. Assumes facts / not in
5 evidence that she met him.

6 THE COURT: Sustained.

7 Q. BY MR. BAKER: Now, did you first see the
8 defendant at the business sometime in December?

9 A. Yes, I think so. */
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1 START TYPING

2 Q. BY MR. BAKER: How do you remember that?

3 A. I remember getting some things from my storage
4 unit for the holidays and I saw him there.

5 Q. Is there some / reason that you remember
6 seeing him during that period?

7 A. He really stands out, his physical appearance.
8 He is a pretty big guy.

9 Q. Did it have / any connection to the time of
10 year?

11 A. Not really. I just remember that he was a big
12 guy and he had a long beard.

13 Q. Do / you remember explaining to the officers
14 you thought of Santa when you saw him because it was
15 around Christmastime and you wondered if he was /
16 working as a Santa at the mall?

17 A. Correct. Now that you remind me, I do
18 remember saying something like that. I had forgotten
19 about that. / He was bald, though. That's basically
20 all I remember.

21 Q. All right. Now, when you saw him on that
22 Saturday with the cart by what you / thought was his
23 unit, did you have any conversation with him?

24 A. I simply said good morning. I was working in
25 my garage. I heard some / noise so I came out and saw
26 somebody was in the unit directly across the way.

1 Q. Did the defendant have any conversation with
2 you?

3 A. Not */ really. He was surprised to see me.

4 MS. MORGAN: Objection. No foundation. Calls for
5 speculation.

6 THE COURT: Sustained.

7 Q. BY MR. BAKER: Did the defendant say anything
8 to you after you greeted him? /

9 A. Nothing.

10 Q. Did you say anything else to Mr. Foster after
11 that?

12 A. Nothing right away, no. Like I say, I
13 returned back to my garage, but / I came out
14 immediately when I heard the noise. I went back and
15 finished working on my stuff.

16 Q. What was it that you were doing / that
17 morning?

18 A. Well, I was trying to go through some of my
19 things and working on getting it ready to move.

20 Q. Were you moving out / of the storage place
21 that afternoon?

22 A. No. I had recently purchased a house, but
23 couldn't move in right away. I was having some
24 construction done / and I was staying at my parents'
25 house just temporarily. I needed to put my things in
26 storage for a little while.

1 Q. All right. So / did you --

2 A. I was attempting to go through my belongings
3 and throw things away so I didn't move stuff into the
4 new house that I / really didn't need or want.

5 MS. MORGAN: Objection. Nonresponsive.

6 THE COURT: All right. At this point it is. Just
7 wait for the next question, please.

8 THE WITNESS: Okay.

9 THE COURT: Counsel, next question. */

10 Q. BY MR. BAKER: What did you personally observe
11 the defendant doing with the moving cart?

12 A. He was loading boxes on the cart.

13 Q. What type of boxes did you / witness him
14 loading onto the cart that morning?

15 A. I saw a lot of those Rubbermaid cartons that
16 people store things in. He was quickly stacking / them
17 on the cart.

18 Q. When you say Rubbermaid cartons, are you
19 talking about the kind that you can purchase at retail
20 outlets like Target and / places like that?

21 A. Exactly. They are pretty common and you see
22 them all over the place. They are perfect for storing
23 things.

24 MR. BAKER: Your Honor, I / have a couple
25 photographs here I would like to mark as exhibits next
26 in order.

1 THE COURT: Certainly, Mr. Baker. How many do you
2 anticipate marking at / this time?

3 MR. BAKER: I would request to mark two
4 photographs.

5 THE COURT: Okay. Both photographs may be so
6 marked as Exhibit 8 and 9.

7 MR. BAKER: Thank you, your Honor. /

8 MS. MORGAN: May I see those before you show the
9 witness?

10 MR. BAKER: Certainly.

11 MS. MORGAN: Thank you.

12 Q. BY MR. BAKER: Do you recognize these exhibits
13 as pictures of the items you saw loaded / on the cart?

14 A. Yes, I do. I don't know if they are the same
15 boxes, but they look the same.

16 Q. They look similar to what */ you saw on that
17 day?

18 A. Yes, they do.

19 Q. Approximately how long would you estimate that
20 the defendant was there loading the boxes?

21 A. After I talked / to him, he was only there
22 about another five minutes or so and then he
23 disappeared.

24 Q. Did you see where he went?

25 A. No, I didn't. /

26 MR. BAKER: No further questions at this time.

1 THE COURT: Cross-examination.

2 MS. MORGAN: Yes, your Honor. Thank you.

3 THE COURT: Let's proceed.

4 CROSS-EXAMINATION

5 Q. BY MS. MORGAN: Good afternoon, Ms. Walker.

6 A. Hello.

7 Q. How are you today?

8 A. I am / fine. Thank you.

9 Q. I just have a few more questions for you.

10 A. All right.

11 Q. This morning I asked you about your history of
12 renting space / at Storage World. You testified you
13 had been there for how many years?

14 A. Well, I rented one garage there for a really
15 long time and / subsequently the bigger one I had
16 rented for about two or three months.

17 Q. All right. And you needed the extra garage
18 because you were moving / into a new home; is that
19 correct?

20 A. That's correct.

21 Q. What month was it that you purchased your new
22 home?

23 MR. BAKER: Objection. Irrelevant.

24 THE COURT: Overruled. You may answer. /
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1 THE WITNESS: I believe the escrow closed in March
2 or April and I moved out of my old apartment and in
3 with my parents in April.

4 Q. BY MS. MORGAN: Now, */ on the day that you
5 witnessed my client at the facility, you said he was at
6 his unit with a moving cart?

7 A. Yes. I thought / it was his unit at that
8 time.

9 Q. You testified you had seen Mr. Foster on the
10 ground floor of the premises on a prior occasion; / is
11 that right?

12 A. That's correct.

13 Q. And I believe you testified he was located
14 near the office; is that correct?

15 A. That's right.

16 Q. Was he in the / office or outside of the
17 office?

18 A. If I remember it correctly, he was just
19 hanging around outside the office.

20 Q. Did you ever see him in / the office behind
21 the desk?

22 A. You mean like he worked there or something?

23 Q. Yes. Did you believe he was employed there at
24 that particular time? /

25 A. I didn't think about that. I thought he was
26 just a customer like I was.

1 Q. So you never had any dealings with him in
2 relation / to your storage units that you were renting?

3 A. No.

4 Q. Okay. I misunderstood your testimony then.

5 Now, there was a question earlier about if you had
6 / ever met the defendant before this weekend?

7 A. No, I had not. He was just someone that I had
8 seen around there and I don't think */ I ever said
9 anything to him before.

10 Q. All right.

11 A. Maybe I said hello or something at some time
12 and I just don't remember. I don't / know.

13 Q. That's fine.

14 Now, you testified this morning about seeing
15 property out by the trash dumpster on several occasions
16 at Storage World. Do you remember / that testimony?

17 A. Yes.

18 Q. Have you ever disposed of your personal
19 property at that trash dumpster before?

20 A. Yes, I have. In fact, that's what I was /
21 trying to get organized to do that day. I was sorting
22 through my things and getting them ready to move to my
23 new home.

24 Q. Did / you ever see my client out at the trash
25 area with a cart?

26 A. Not that I remember.

1 Q. You don't remember ever seeing Mr. Foster
2 there / either throwing furniture away or taking items
3 from the trash?

4 A. No, I am sorry, I don't remember that.

5 Q. Is it a common practice for people / to go
6 through the dumpster that is located there?

7 A. I believe so. Sometimes people throw things
8 away that somebody else possibly wants.

9 Q. One man's trash / is another man's treasure,
10 is that it?

11 A. I suppose you could say that. I just know
12 that I have enough of my own stuff and */ I don't need
13 somebody else's.

14 Q. Okay. When you spoke to Mr. Foster on that
15 Saturday morning, you testified he didn't respond
16 directly to you?

17 A. I / didn't hear him say anything directed to
18 me.

19 Q. Did you make eye contact with him during that
20 time?

21 A. I exited out of my garage and / he was bending
22 over the cart and loading it with boxes. I spoke to
23 him and then when he didn't say anything I quickly went
24 / back to what I was doing.

25 Q. Okay. Did he stand up and look at you when
26 you spoke to him?

1 MR. BAKER: Objection. Asked and answered.

2 THE COURT: No. / Overruled. You may answer.

3 THE WITNESS: He just put the boxes down and then
4 went back into the garage to get more boxes.

5 Q. BY MS. MORGAN: Could you determine if / he
6 was loading or unloading the boxes?

7 A. He was putting things on the moving cart and
8 he took them somewhere.

9 Q. But, you didn't see where / he went; is that
10 correct?

11 A. Yes.

12 Q. Did you ask Mr. Foster what he was doing?

13 A. No, I didn't.

14 Q. Now, you were interviewed by the detective /
15 later that weekend; is that correct?

16 A. Yes, I was.

17 Q. How were you contacted?

18 A. The very next afternoon when I returned, the
19 office manager approached me */ and asked me if I had
20 seen anything the day before.

21 Q. Do you remember that person's name?

22 A. Yes. It was George. He was the weekend /
23 manager there.

24 Q. Had you had any dealings with him before that
25 weekend?

1 A. I just had seen him there and I understood he
2 was the manager. / I possibly paid my rental fees to
3 him in the office, but I don't remember anything
4 specific.

5 Q. What did he say to you that day? /

6 MR. BAKER: Objection. Hearsay.

7 THE COURT: Sustained.

8 Q. BY MS. MORGAN: You testified that George
9 approached you the next day. Would that be Sunday?

10 A. Correct.

11 Q. What were you doing there that day?

12 A. It / was the same thing that I was doing there
13 Saturday. I needed to get my stuff cleaned up that
14 weekend and so that's what I / was focused on.

15 Q. Did your father bring you that Sunday as well?

16 A. No. That afternoon my dad remained at home
17 and didn't have to work. / I was just driving his
18 car.

19 Q. Did you own a vehicle at that time?

20 MR. BAKER: Objection. Irrelevant.

21 THE COURT: Sustained.

22 Q. BY MS. MORGAN: When the manager asked you if
23 you had / seen anything, what was that conversation?

24 MR. BAKER: Objection. Hearsay.

25 THE COURT: Sustained.

1 MS. MORGAN: Your Honor, I will just recall this
2 witness after we have the manager testify if that's */
3 all right.

4 THE COURT: You may call whatever witness you
5 desire to call. Either attorney is not precluded from
6 calling any witnesses.

7 MS. MORGAN: I was just hoping that / I wouldn't
8 need to recall the witness and that I could ask her
9 that question now.

10 THE COURT: Is there any objection?

11 MR. BAKER: No objection. That's fine.

12 THE COURT: Proceed. /

13 Q. BY MS. MORGAN: Did you have any conversation
14 with the manager that day?

15 A. He asked me if I had seen anything that day
16 before.

17 Q. And what was your / response to him?

18 A. I told him about seeing the guy with the beard
19 loading the boxes.

20 Q. And what did George then say to you?

21 A. He / just said that I might be contacted by
22 the detectives.

23 Q. Was that the end of the conversation?

24 A. Yes, it was.

25 MS. MORGAN: Nothing further, your Honor.

26 THE COURT: Is / there any more redirect?

1 MR. BAKER: Just a quick question.

2 THE COURT: Proceed.

3
4 REDIRECT EXAMINATION

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6 Q. BY MR. BAKER: When you had your conversation
7 with the manager that weekend, did you describe to him
8 what / you had seen Saturday?

9 A. He just asked me if I had seen anything around
10 the garage by mine. I told George that I had seen /
11 the guy with a cart loading boxes.

12 Q. And he told you that the detectives would be
13 contacting you; is that correct?

14 A. Yes. He said that */ they wanted to interview
15 me. He gave me a business card to call the police
16 detective.

17 Q. So did you call the police or did they /
18 contact you?

19 A. Actually, they were there in the main office.
20 George said they wanted to interview me separately.

21 Q. Did you then go down to the / office and talk
22 to them?

23 A. Actually, the officer came up to question me
24 at my garage unit.

25 Q. And did the officer question you there at /
26 Storage World?

1 A. Yes, just right there.

2 Q. Do you remember if the police showed you a
3 photograph to see if you could identify anyone?

4 A. Yes. I / looked at what they call a six-pack.

5 Q. How many photos did you look at with the
6 officer?

7 A. I believe there were six in one folder. /

8 Q. Did anybody look familiar to you from that
9 six-pack?

10 A. Yes. I circled a picture of the gentleman
11 that I had seen that weekend.

12 Q. Did anyone / identify that person to you?

13 A. No. I just signed my signature and put the
14 date on it.

15 Q. Have you had a chance to see that / since that
16 day?

17 A. No.

18 Q. Did anyone show you any other photos this
19 morning before you testified?

20 A. No.

21 MR. BAKER: Nothing further.

22 THE COURT: Anything further.

23 MS. MORGAN: No, sir. Thank you. */
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